

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Ravi Chandra *et al.*

Application No.: 09/872,920

Filed: June 2, 2001

For: METHOD AND APPARATUS FOR
PROCESS SYNC RESTART

Examiner: Shingles, Kristie D.

Art Unit: 2444

Confirmation No.: 4641

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The Appellants submit the following Reply Brief pursuant to 37 C.F.R. § 41.41 for consideration by the Board of Appeals and Interferences ("Board"). This Reply Brief is responsive to the Examiner's Answer of March 25, 2010.

REMARKS

The Examiner's Answer mailed March 25, 2010 has been received and carefully noted. Claims 1, 2, 4-8, 10-29, 31-35, and 37-43 are pending and currently on Appeal. Favorable reconsideration of the pending claims is respectfully requested in view of the following comments.

I. Rejection of Claims 1 and 28 Under 35 U.S.C. § 102(e)

Claims 1 and 28 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Bishop *et al.* (U.S. 6,983,317) ("Bishop"). The Appellants respectfully traverse these rejections for the reasons set forth in the Appeal Brief. The Appellants set forth various arguments identifying specific reasons why the elements in Bishop identified by the Examiner do not disclose the elements of the claims. In the Response to Argument section of the Examiner's Answer, the Examiner reiterates her position without addressing the arguments set forth in the Appeal Brief. Therefore, the Appellants maintain that Bishop does not disclose each and every element of the claims and in the same manner as arranged in the claims.

I. Independent Claims 1 and 28

a. Independent claims 1 and 28 are not anticipated because Bishop does not disclose clearing data upon expiration of a time period beginning upon receiving a notification of death

Independent claims 1 and 28 recite, among other limitations, "clearing the first set of data by the second network process if a time period expires, the time period *beginning* upon *receiving* the notification of death [of the first network process]" [emphasis added]. In the Examiner's Answer, the Examiner restates her argument from page 2 of the Final Office Action. *See* Examiner's Answer mailed March 25, 2010, Response to Argument, pg. 12. The Examiner maintains her position that the eviction period disclosed in Bishop equates to the time period

beginning upon receiving the notification of death recited in the claims. The Examiner agrees with the Appellants' assertion that Bishop's eviction period begins at the last heartbeat. *See* Examiner's Answer mailed March 25, 2010, Response to Argument, pg. 12, "upon notification of death by the heartbeat indicator, the eviction period is started." However, the Examiner does not address the Appellants' assertion in the Appeal Brief that a heartbeat does not equate to a notification of death, but instead indicates that an engine is **not dead**. The Examiner states that "the eviction period begins upon expiration of the heartbeat period which is the indication and notification of the process's death" and repeats previously cited passages of Bishop already addressed by the Appellants (disclosing that a heartbeat from one engine informs other engines of the engine's existence). *See* Examiner's Answer mailed March 25, 2010, Response to Argument, pg. 12. The Examiner's statement contradicts her own characterization of Bishop on page 4 of the Examiner's Answer that death is indicated by "no heartbeat from the engine." Also, the very term "heartbeat" is well understood to indicate when something is alive and therefore by definition is not dead, as consistent with the use of the term in Bishop. Since the claims recite a "time period beginning upon receiving the notification of death" and Bishop's eviction period does not begin upon receiving a notification of death, Bishop's eviction period does not equate to the time period recited in the claims.

In view of the foregoing, Bishop fails to disclose all the elements of claims 1 and 28 arranged in the same way as in claims 1 and 28, including "clearing the first set of data by the second network process if a time period expires, the time period beginning upon receiving the notification of death [of the first network process]." The Appellants respectfully request reversal of these rejections.

b. Independent claims 1 and 28 are not anticipated because Bishop does not disclose synchronizing data after a restart if the time period does not expire

Independent claims 1 and 28 recite, among other limitations, "synchronizing by the second network process the first set of data with a second set of data if the time period does not expire, the second set of data received from the first network process after the first network process *restarts*" [emphasis added]. In the Examiner's Answer, the Examiner restates her

argument from page 2 of the Final Office Action. *See* Examiner's Answer mailed March 25, 2010, Response to Argument, pg. 13. The Examiner then adds a statement that "*Bishop et al's* [*sic*] disclosure that the merging and updating of data fulfills the functionality of the synchronizing claim language in that updates are merged with existing data after an engine restarts or recovers" and restates previously cited passages already analyzed by the Appellants. *Id.* However, this statement is not an appropriate legal standard for establishing anticipation. As noted in the Appeal Brief, to establish anticipation, the Examiner must prove that a cited reference describes each and every element of the claims as arranged in the same way as in the claims. Moreover, the Examiner does not address the Appellants' argument in the Appeal Brief that any alleged synchronization in Bishop occurs **after** the eviction period **has expired**. Instead, the Examiner seemingly concedes the Appellants' point because she acknowledges that "synchronizing" occurs "after an engine restarts or recovers." Seeing as the Examiner equates the eviction period of Bishop with the recited time period of the claims and the eviction period has already expired prior to any alleged synchronization, Bishop does not disclose the claim limitation of "synchronizingif the time period does not expire."

In view of the foregoing, Bishop fails to disclose all the elements of claims 1 and 28 arranged in the same way as in claims 1 and 28, including "synchronizing by the second network process the first set of data with a second set of data if the time period does not expire, the second set of data received from the first network process after the first network process restarts." The Appellants respectfully request reversal of these rejections.

II. Rejection of Claims 2, 4-8, 10, 11, 16-27, 29, 31-35, and 37-43 Under 35 U.S.C. § 103(a)

Claims 2, 4-8, 10, 11, 16-27, 29, 31-35, and 37-43 stand rejected under 35 U.S.C. § 103(a) as being obvious over Fuchs *et al.* (U.S. 5,440,726) ("Fuchs"), in view of Bishop. For the reasons set forth in the Appeal Brief and the statements above, these claims are not obvious in view of Fuchs and Bishop.

Independent claims 7, 16, 20, 24, 34, 39, and 43 recite "if a first set of data is generated by the first network process before a time period expires, the time period beginning upon

receiving by the second network process a notification of death of the first network process, then synchronizing by the second network process the first set of data with a second set of data” or analogous aspects. For the reasons set forth in the Appeal Brief and the Reply Brief, Bishop does not disclose the aspects involving the time period beginning upon notification of death. The Examiner does not indicate and the Appellants do not discern any part of Fuchs that cures the aforementioned deficiencies of Bishop regarding these limitations. Therefore, the cited references do not teach or suggest all the limitations of independent claims 7, 16, 20, 24, 34, 39, and 43. Claims 2, 4-6, 8, 10, 11, 17-19, 21-23, 25-27, 29, 31-33, 35, 37, 38, and 40-42 depend from one of independent claims 7, 16, 20, 24, 34, and 39 and thus incorporate the respective limitations thereof. For at least the above reasons regarding the independent claims, the cited references fail to teach or suggest all the limitations of these dependent claims. Accordingly, the Appellants respectfully request reversal of these rejections.

III. Rejection of Claims 12-15 Under 35 U.S.C. § 103(a)

Claims 12-15 stand rejected under 35 U.S.C. § 103(a) as being obvious over Kidder *et al.* (U.S. 6,694,450) (“Kidder”), in view of Damani *et al.* (U.S. 5,938,775) (“Damani”) and Bishop. For the reasons set forth in the Appeal Brief and the statements above, these claims are not obvious in view of Kidder, Damani, and Bishop.

Independent claim 12 recites “the first network process to generate a first set of data after restarting and the second network process to synchronize for itself the first set of data with a second set of data generated by the first network process before restarting upon determining a time period has not expired, the second network process to clear the first set of data upon determining the time period has expired, the time period beginning upon receiving a notification of death of the first network process.” For the reasons set forth in Appeal Brief and the Reply Brief, Bishop does not disclose the aspects involving the time period beginning upon notification of death. The Examiner does not indicate and the Appellants do not discern any part of Kidder or Damani that cures the aforementioned deficiencies of Bishop regarding these limitations. Therefore, the cited references do not teach or suggest all the limitations of independent claim 12. Claims 13-15 depend from independent claim 12 and thus incorporate the limitations

thereof. For at least the above reasons regarding independent claim 12, the cited references do not teach or suggest all the limitations of these dependent claims. Therefore, the Appellants respectfully request reversal of these rejections.

In view of the foregoing, the Appellants respectfully request that the Board overturn the rejections of the above claims.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Date:

May 24, 2010

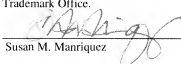


Olivia J. Tsai, Reg. No. 58,350

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
Telephone (310) 207-3800
Facsimile (310) 820-5988

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Susan M. Manriquez

5/24/10